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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE QUINTANA,

Defendant and Appellant.

F069967

(Kings Super. Ct. No. 14CM8585)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Detjen, J. and Peña, J.

Although charged with seven crimes, defendant Jorge Quintana was convicted of only one—criminal threats against Luis Magana (Pen. Code, § 422).¹ The prosecution had dismissed two counts and the jury found defendant not guilty on four. The jury found true an allegation that the crime was committed for the benefit of a street gang (§ 186.22, subd. (b)(1)(B)). The trial court sentenced defendant to eight years in prison. On appeal, he contends (1) the restitution order connected to dismissed/acquitted counts should be stricken and (2) he is entitled to three additional days of custody credit. The People concede and we agree. We modify the judgment and otherwise affirm.

DISCUSSION

I. Restitution Order

Defendant was charged with both robbery and misdemeanor petty theft of Magana, but he was not convicted of either charge. Nevertheless, the probation officer's report recommended that defendant be required to pay restitution to Magana, and the trial court followed the recommendation, stating: "He's ordered to pay restitution to the victim in the amount of \$180, and the victim is Luis Magana." Both parties now agree the order was unauthorized and must be stricken.

We review the trial court's restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.) "[A]n order resting on a demonstrable legal error constitutes such an abuse." (*People v. Hume* (2011) 196 Cal.App.4th 990, 995.)

Crime victims have a state constitutional right to restitution for "losses they suffer" from the defendant who inflicted those losses. (Cal. Const., art. I, § 28, subd. (b)(13)(A); see also § 1202.4, subd. (a)(1) ["It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime"]; *People v. Walker* (2014) 231 Cal.App.4th 1270, 1273-1274.) Accordingly, "in every case in which

¹ All statutory references are to the Penal Code unless otherwise noted.

a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims." (§ 1202.4, subd. (f); see also *People v. Runyan* (2012) 54 Cal.4th 849, 856.)

Here, however, defendant was not convicted of any theft crime against Magana. Consequently, Magana did not suffer any economic loss and the restitution order to pay him \$180 was unauthorized. The trial court abused its discretion in ordering the restitution.

II. Custody Credits

The parties also agree that defendant is entitled three more days of custody credit for a total of 296 days of custody credit.

DISPOSITION

The judgment is modified by (1) striking the \$180 restitution awarded to Luis Magana and (2) awarding three more days of custody credit for a total of 296 days. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.